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Supreme Court, U.S.
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No. 96-877

In The

Supreme Court of the United States

October Term, 1996

PAUL H. STITT,

Petitioner,

v.

CNG TRANSMISSION CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

REPLY BRIEF OF PETITIONER

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NEW POINTS RAISED IN BRIEF IN OPPOSITION

I. WHETHER PETITION FOR CERTIORARI RAISES QUESTIONS NOT PROPERLY PRESENTED BELOW.

II. WHETHER THE PETITION RAISES ISSUES WITH RAMIFICATIONS BEYOND ITS OWN FACTUAL CONTEXT.

INTRODUCTORY STATEMENT

This case involves a challenge by a landowner to a district court ruling granting, by declaration, a 50-foot-wide easement to a condemnor who had represented to the Board of Viewers,[1] during the 1968 condemnation proceedings, that it was acquiring an easement only 30 inches in width. The representation regarding the width of the easement being condemned was made by the chief witness for the condemnor in the original proceeding and was made for the specific purpose of reducing the award to the condemnee. The condemnee was awarded $38,000, and the condemnor installed approximately 2,185 feet of pipeline across the condemnee's property.

Nearly 30 years later, the condemnor sought to replace the original pipeline with a wider pipeline. When the condemnee objected, the condemnor brought a declaratory judgment action seeking a declaration that it was entitled to a 50-foot-wide easement, despite the representations in the original condemnation action that only a 30-inch-wide easement was being condemned. The district court granted the relief requested and the condemnee appealed. The court of appeals affirmed the district court's ruling, and the condemnee filed this Petition for Certiorari.

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[1]The Board of Viewers is the body which serves as the finder of fact with respect to the fair market value of property condemned under Pennsylvania law.

ARGUMENT

I. THE QUESTIONS RAISED IN THE PETITION FOR CERTIORARI WERE BEFORE THE COURTS BELOW.

In the panel decision upholding the judgment in favor of the Respondent, the court of appeals rested its decision, in part, on the fact that the condemnor's appraiser valued the easement at only $4,000, while the ultimate award was $38,000. This differential, the court of appeals reasoned, demonstrated that the Board of Viewers did not rest its award on the condemnor's representation that it only sought a 30-inch-wide easement. (App. at 5.)[2]

Aware that the court of appeals' reasoning in this regard is indefensible and directly contradicted by the Record, the Respondent seeks to obscure the issue by making the spurious argument that this issue was not before the court of appeals. (Respondent's Brief in Opposition at 5.) As an examination of the panel's opinion clearly shows, the issue was specifically raised by the court of appeals and served, in part, as the basis for its decision. Unfortunately, the court of appeals clearly erred in making an assumption regarding the differential between the condemnor's appraisal and the award, and

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[2]The designation "App." refers to the Appendix bound with the Petition for Certiorari, wherein the decisions below are reprinted.

failed to adequately examine the record which directly contradicts the court of appeals' assumption.[3]

Thus, the issue regarding the reasons for the differential in value is clearly one that is proper for this Court to consider. As the condemnee set out in the Petition for Certiorari at pages 16-17, the differential was not based on a difference of opinion regarding the width of the easement, but was based entirely on the effect of the easement upon coal, clay, subsoil, and drainage on the property. Moreover, evidence in support of these factors was set out in the record below and is contained in the Joint Appendix.

The decision of the court of appeals was based on a clearly erroneous resolution of the evidence, and this Court should therefore exercise its authority of oversight to reverse the decision.

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[3]Although the record clearly contains uncontroverted evidence in direct conflict with the court of appeals' conclusion, such an assumption would have been unwarranted even in the absence of such evidence. A condemnor's appraisal of property subject to condemnation is often significantly lower than the ultimate award. This fact does not mean that the jury or viewers thought the condemnor was acquiring more than it stated in the petition for condemnation; it is, rather, simply a function of the condemnor's interest in acquiring the property at the lowest possible price.

II. THE PETITION RAISES ISSUES WITH RAMIFICATIONS BEYOND ITS OWN FACTUAL CONTEXT.

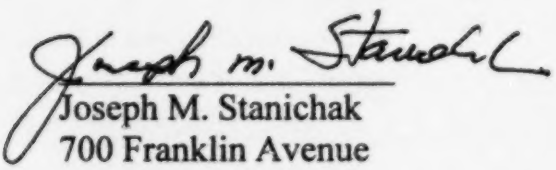
The Respondent makes the gratuitous statement that this Petition raises issues which do not have ramifications beyond the instant factual context. (Respondent's Brief in Opposition at 8.) This statement is belied by the Respondent's own statement that the issue presented in the case "has been decided by both federal and state courts . . . with remarkable consistency." (*Id.*)

The truth, as the Respondent surely recognizes, is that the same kind of deprivation suffered by the Petitioner in this case has occurred many times across the country, and in the absence of guidance from this Court, these deprivations will continue to occur. In fact, recognizing the advantage given to the condemnor in this situation, CNG Transmission Corporation and other public utilities continue to employ the tactic of understating the interest they seek to acquire at the time of the condemnation, secure in the knowledge that, regardless of the representations made during the condemnation proceedings, they can easily secure a declaration that they have acquired a 50-foot-wide easement.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Certiorari.

Respectfully submitted,



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